

HELP AMERICA VOTE ACT OF 2002
Public Hearing on Preliminary State Plan
June 25, 2003

JOHN GALE:

Good morning. I'm John Gale, Secretary of State for the State of Nebraska. We are having this hearing as a public hearing as required by federal law, on the recommendations for the Nebraska state, what we call the HAVA plan, which is Help America Vote Act, passed by the United States Congress and signed by the President. We are meeting here today for the purpose of eliciting public comment with regard to the plan recommendations that have been made by the State Plan Commission. And also to hear testimony from members of the staff of the Secretary of State's Office with regard to any response to items in the plan that may need some amendment or addition. This is not a hearing that is governed by the Opening Meetings Law, but we felt that it would be most appropriate to conduct ourselves with respect to the Open Meetings Law. Therefore, a media advisory was sent out to the media to advise them of this hearing this morning. And also, we have given notice on our website, of the Secretary of State's Office. And notice was likewise published in the Lincoln Journal Star on Monday, June 9, 2003, giving public notice of this meeting. We wanted to give any members of the public or any special interest groups an opportunity to be here and hear the testimony and reflect on any issues that they might want to address themselves. Since the State Plan Commission was appointed by me, but really operated fairly independently of my office, I want to give a special thanks to all of the members of that State Plan Commission. It really is a very historic moment in the nation's elections law. And in really the history of our democracy, to have this opportunity to upgrade, fine tune, modernize our election system all across the nation. In fact, it's almost revolutionary because elections up until now have been really kind of a patchwork across the nation and pretty much governed from county to county without a lot of state control or federal control. And now we have a federal law that has a number of mandates that will raise the level of accessibility of our election system to all of our citizens in a way that's never been accomplished before. So I would like to thank all of the members of that commission because they served as volunteers. And I think it's one of those wonderful partnerships that we see so much in our nation and in our state where, government isn't just them and us, citizens versus bureaucrats. Government is all of us. We're a government of the people, by the people, and for the people. And it's absolutely essential that citizens be willing to step forward and serve as volunteers in many, many capacities, on commissions, on boards, and on this type of state plan commission. Without that type of input and participation from the public, government couldn't be near as effective, or efficient, or even farsighted as it is able to be with the public help. I also want to thank Martha Gadberry and Gadberry Associates. Martha was our facilitator. We had a commission that was somewhat unique because it didn't function with a chairman, an

executive committee, sub-committees, it functioned as a committee of a whole at every meeting. Everyone participated, everyone had a voice and an opportunity to be heard. The meetings, many of them, were all day affairs and everybody participated civilly and openly and candidly. And there were never any walkouts or shutdowns or lockouts. It was a wonderful town hall democratic experience. And Martha did an outstanding job of facilitating that discussion and bringing it to a conclusion, and recommendations that we're very, very pleased about, and very appreciative of receiving. In fact, we couldn't go forward in this process without that state plan. We could not access any further federal funds without the state plan. It's key to our vision and what we want to accomplish in Nebraska. But it's also a key to receiving any further federal help and assistance. So at this time, I would like to ask Deputy Secretary of State for Elections, Neal Erickson, if he could explain where the process goes from here before we have any testimony. Neal.

NEAL ERICKSON:

Thank you Secretary Gale. And I think as the commission members that are present have been through this before; this may be a repeat of some of the process. But for members of the general public, maybe an explanation of where this State Plan Commission and the state plan came from and where it goes, might be in order. Within Help America Vote Act, there is a, as Secretary of State Gale mentioned, a number of mandates. But one thing that is unique is that the federal government provided a pool of money to the state to help implement this act. One of the pools of money is contained in Title II of that act, often called requirements money. And with the level of appropriations this year, for this fiscal year, the state would be entitled to \$4.9 million. In order to access that money, each state had to certify a number of things, but in addition, had to develop a state plan as to how that funding would be used. The method for establishing a state plan was laid out in the federal statute, in terms of the formation of a commission. Some of the...actually very few of the members were mandated, but there was required to be representation from the two largest counties and the disabled community. In Nebraska, Secretary of State Gale chose to expand that pool quite a degree, I think there...if I remember correctly, 16 members of that pool total...or of that commission total. And over a, oh I'd say eight week, maybe ten week period, developed a set of recommendations that the Secretary of State's Office developed the state plan from. Right now we are in, that plan became available on June 9th of 2003. According to federal law, that plan is required to be open for a public comment period for 30 days. After review of those comments, that plan is then published in the Federal Register for 45 days. Following that publication in the Federal Register, the state can make application to the Election Administration Commission for the Title II funds, as I mentioned in Nebraska's case, for this year would be \$4.9 million. So we're in kind of the middle of this process right now. We're in the...and we're in the public comment stage. There are a variety of ways to comment publicly on this, either by writing to our office, emailing our office via our website, or through this hearing. Over on the table, by the

doors you came in, to date we have received I guess four now, four emails relating to HAVA, and those are available in a folder on the table by the door if anybody wishes to review them. That's basically the process for HAVA. This hearing provides the opportunity for the public to comment on this and while we have asked for written comments on this, this public hearing will suffice for public comments because we will be transcribing this. So, I don't know, is there any questions you might have that...

JOHN GALE: None that I would have. Are there any...I guess I would like to ask, how many here do plan to testify with regard to the matter? Okay, I think then we need to decide maybe who has the most urgent schedule and who would like to, in terms of the order of which people testify, we do have some members of the commission I see who have suggested they would like to testify. In terms of time limits, let's see a show of hands again so we can see how...let's see, one, two, three, four, five, six, seven, eight, nine, ten, eleven, and then Neal, you would be testifying, so twelve.

NEAL ERICKSON: Martha also.

JOHN GALE: And I counted Martha. So, and I want to give everybody a fair opportunity to be heard, but I at the same time have to keep a balance so that I don't allow one person to consume an inordinate amount of the time, to the detriment of other persons who might want to speak. So, I would say that we probably need to suggest something between five and ten minutes per person. We won't wave a red flag but, I may have to interrupt at some point if someone gets too carried away. And hopefully if you have comments that would exceed that type of verbal testimony, that you would still submit the remainder in writing to us so we'd have it in writing. And that way, everybody has a fair opportunity to be heard but can also supplement their comments by written comments. So, let's see, we do have other staff available, Amy. Amy Brock, if you would...do you have a pad of paper with you? Could you get the names of each of those individuals who would like to speak today and get them signed up on a sheet of paper so I have that sheet here with me. And then I can get identified those who may have employment or other commitments in which they would like to go first and I would certainly give them the courtesy of speaking first. So if we could get that done for just a few minutes, that would be great. And since Martha Gadberry is here and she was our facilitator, she can give us an overview and some enlightenment as of the process. So while Amy is getting everyone else signed up, and we'll allow you a full ten minutes, Martha, as you have a lot of ground to cover. And if you need some additional time, we'll be gracious.

MARTHA GADBERRY: If my feet would just touch the floor, I'd be very happy.

JOHN GALE: Those are difficult chairs to move around too and I'm sorry that it's not more comfortable.

MARTHA GADBERRY: They are comfortable.

JOHN GALE: If you could identify yourself and your employment and your location, business location.

MARTHA GADBERRY: Yes, good morning Mr. Secretary of State, election staff, and Nebraska citizens. For the record, my name is Martha Gadberry, my address is 6200 Randolph Street, Lincoln, Nebraska. And I am affiliated with Gadberry and Associates, a neutral facilitation firm. I'm pleased to report to you the process of that State Plan Commission, used to make recommendations concerning the plan to implement the Help America Vote Act of 2002. For the past several months I've had the privilege of providing neutral facilitation and planning expertise to the State Plan Commission. The results of their efforts have been provided to your office and is entitled "Help America Vote Act, State Plan Commission Recommendations Report, May 27, 2003". We appreciate the fact that it has been made available on the website and also on the table at this hearing. Although an advisory body was a requirement of the HAVA Act of 2002, I believe that your office took seriously the responsibility and opportunity this historic legislation presented and selected members to the State Plan Commission to represent every type of voter and a variety of sizes of election office operations. From the beginning of our work together, it was apparent that this group of people were deeply committed to making it easier for Nebraskans to register, and to vote. The regular attendance was remarkable. As they deliberated about what should go into the state's plan, every type of voter was considered. We met five times, roughly every two weeks, for intense discussion. We organized our work around the 13 requirements of the plan including the equipment requirements of HAVA, the election process, the education of election officials and poll workers, vote counting, and priorities for the allocation of funds. Over and over, a few concepts kept rising to the surface. They were truly at the heart of the commission members work. These principles, as we call them, are listed at the beginning of the commission's report and referred to in the preliminary state plan as its foundation. My role was a neutral one. I provided group discussion and planning process expertise, not content expertise. That is, the work of the group came from them without my influence. The Secretary of State's Office was responsive to the groups request for information, but was not involved in their decisions. The recommendation of the commission members were based on principles and general guidance with a focus on populations which traditionally had not been part of the election process. They offered many ideas to consider in your implementation. In the short time available, it was impossible to research equipment options, the cost of equipment, or the reality of implementing certain activities. They were concerned with giving their best advice, even if an idea becomes fiscally or physically impossible to implement. I'm pleased about the process of the planning, the interaction of the members, and the recommendations report. I hope the Secretary of State's Office will continue to use the commission as

additional decisions are being made. They represent a wealth of experience. They're good thinkers and, like you Mr. Secretary, are committed to helping every citizen vote. Thank you for your dedication to this project. Any questions?

JOHN GALE: Thank you very much, Miss Gadberry, for all of your work and your dedication. You not only came with expertise but, you came with a passion for the work too and we appreciated that. And I noticed at the meetings I attended that, your enthusiasm was very infectious for everyone.

MARTHA GADBERRY: Thank you.

JOHN GALE: Thank you for the hard work and for the final report and recommendations. Do we have any questions of Miss Gadberry? Copies of your recommendations are available here to others who might want them. So they're probably at the door?

MARTHA GADBERRY: Yes.

JOHN GALE: Okay.

MARTHA GADBERRY: Thank you.

JOHN GALE: Thank you very much. We do have two parties, Mr. Erickson, maybe we'll need to allow two other people to speak first. They have other commitments.

NEAL ERICKSON: Do you want to do that before we discuss the difference between the state plan and the recommendations?

JOHN GALE: I think so, because that will take a little bit of time, I think. Mr. Allen Beermann, former Secretary of State is here and he has a 9:45 meeting. And Mr. Jim Burden needs to get to work. So we'll hear from Mr. Beermann, and then Mr. Burden, and then we'll hear from Mr. Erickson so.

ALLEN BEERMANN: I would yield to Mr. Burden, I'm okay.

JOHN GALE: Okay, Mr. Burden.

ALLEN BEERMANN: Go ahead.

JIM BURDEN: My interest...I'm Jim Burden, Lincoln, Nebraska, 7000 Northwest Twenty-seventh Street.

JOHN GALE: Would you spell your name for the record, please?

JIM BURDEN:

B-u-r-d-e-n. And my interest in this is about a 20 year, mostly passive interest in the issues dealing with town hall democracy. And about three years ago, I come across a reference in a Buckminster Fuller biography. In 1939 he'd written at the eve of the first battles of World War II that the only way we're going to avoid wars in the future, is to have global democracy. But in order to make the democracy so it was not controllable by special interests, he felt that there should be instituted what he called "Telephone Democracy", in which people can vote from their residences on just about everything. And he said it at that point in 1939, that there wasn't the means to verify the votes. But starting about 20 years ago, the development of electronic switching systems allowed that means. And today it's absolute. About three years ago I checked with the phone company and, I haven't done, you know, appropriate follow-up checks on all the technologies involved, but it seems to be an absolutely verifiable means if you include a PIN number. In other words, each voter could change their PIN number to, you know, make it so that there was no way that somebody could rig the elections, electronically that is. On the Internet in the meantime, I found several technical papers and discussions that were being carried on, mostly through the Green Party, dealing with whether the electronic Internet voting, that was being proposed in Florida should be allowed to be adopted. The primary concern was, is that the Internet switching system allowed too many interfaces in which somebody could come in and dial an election in, if they had the means to do it, if you follow what I mean. And so it would be not verifiable. In a conversation with a fellow here in town, Lyle Luff (spelling?), some approximately ten years ago, he was talking about the same problem of converting public records to electronic document format and verifying it in such a way that they could not be changed later on. So I'm trying to put all these things together at any rate. So in the meantime, along comes inexpensive DVDR disks that can concurrently record all data inputs in such a way that they can't be written over. And I've checked recently and this is possible. Using the best of the upcoming DVDR technologies, a single disk can hold over 14 megabytes, and maybe very shortly even more, to the point that you have almost unlimited data storage in a very compact format. By going with multiple sites, which, different holders, kind of like poll watchers, would have parallel DVDR circuits hooked into this. You could then record everything that occurred in government. And I mean all comments that people made, all votes. So putting together with the "Telephone Democracy", and I called the phone company on more than one occasion, and for about \$250,000, and this was an arbitrary example in Lancaster County, you could keep 100 phone lines open 24 hours a day for this voting system. An almost unlimited capacity for people to vote on everything and make comments on everything. There's many different ways of doing it, and it depends on the individual voter. You could do voice prompts, you could do computer connections through this directly, not through the Internet, but directly to the base stations that would be receiving the votes. At any rate, I was also curious how people took this. In other words, talked to people in the

Libertarian Party, some people in the Green Party, and just people in general. And I found that almost everybody was against it. And this took me back because I thought we always branded ourselves as a democratic country. And recently, at the Libertarian Party meeting up at Mahoney Park, a fellow explained it to me so I could understand it better, although I should have got it out of the history books. There is a fear that the common man, if given the vote, would be able to control, irrationally, the interests...the better interests of greater society. Sometimes this is taken to be the interests of the wealthiest sectors of society that to a degree are the most important areas of the economy. And this fear goes clear back to the formation of the American Constitution, that pure democracy was...the common man was considered to not be capable of supporting a pure democracy. So this sustains to this day, I mean, we have representative democracy. If you look in Black's Law Dictionary, representation of persons, at least in one court finding, is considered to be a fiction, because nobody can represent the interests of many different people. It'd be like a lawyer trying to represent both sides of a case, if you follow what I mean. And what happens is, with representative democracy, you have the person with the most money, the most lobbying power, the most persuasive presentation, more than just the most persuasive actual argument, oftentimes winning out. This isn't always, but it oftentimes happens this way. And it doesn't necessarily have to be economic interests or minority interests. It could be large groups, such as, for instance, teachers seeking salaries...salary increases. So how to overcome this in a "Telephone Democracy" situation would be to keep the identity of the individual secret, but to profile the character of each voter, so that when blocks of voters that had special interests called in, you would...it would be kind of like a...the Gallup Poll looks at the interests of the people that are taking their poll. In other words, they ask their demographic information in order to prevent special interests from dominating the democracy, or in this case, this survey, this poll. And you could do this, keep it a secret

JOHN GALE: I've got to give you three minute warning. You've had seven, so...

JIM BURDEN: Okay, and that's fine.

JOHN GALE: ...I'll give you three more.

JIM BURDEN: If you're following all this, and it's difficult to put all this together shortly and I don't have organized presentation so I'm kind of skipping around. But at any rate, in the end, for about half the cost of just administratively running the Lancaster County Election Commission, you could take a vote on everybody all the time, on every subject, and get comments from people, be able to categorize these comments through many different layers in this process and it separate from the Internet because it has to, in order for verification, you have to be able to be free of all the servers and processors that make up the Internet system. And unfortunately, the telephone system is much more

direct and simple. And that's pretty much it. The idea is, is to get pure democracy instituted to do it first off as a poll system to survey the voters, to find out what they really want moment-to-moment, instead of just guessing at it. And then eventually, maybe to bring it in as combinations of low-cost referendum democracy, and then eventually, even as a form of government many places, to reduce the cost of administrative overhead in government. That's about it.

JOHN GALE: Thank you, Mr. Burden.

JIM BURDEN: Okay.

JOHN GALE: Do appreciate your being here and sharing your thoughts, and they are recorded and they'll be part of the record so, thank you.

JIM BURDEN: Thank you.

JOHN GALE: Mr. Beermann.

ALLEN BEERMANN: Secretary Gale, and members of the commission, Martha and her group, and I want to compliment, first of all...

JOHN GALE: I need to have you identify yourself for the record.

ALLEN BEERMANN: I'm going to do that.

JOHN GALE: We all know you, but you still need to identify yourself. (Laughter)

ALLEN BEERMANN: Allen Beermann, 4730 A Street, Lincoln, Nebraska. In one category of state misrepresenting myself. In the other category, the Nebraska Press Association, the newspaper people. Thank you for the courtesy of allowing me to testify this morning. I want to compliment you and the Legislature, and the commission, and Martha Gadberry and her group for developing a plan that I think will be useful and helpful and beneficial to citizens in a very important process in our state. One area that I would like to have you take more time on, would be the whole process of how it is that people in the military vote. And it's not only people that are actually in uniform, but also assisting the military is a very large civilian corps of citizens in various countries. We, for example, probably have about 5,000 Nebraskans in various venues around the world, who are now serving either in the military or a civilian capacity assisting the military. And we have found out that the process of a military person who's overseas somewhere is almost a quagmire, and some even call it a landmine. Incidentally, there is a national group working on this that might be helpful. As a matter of fact, it's being chaired, I believe, by a former Nebraskan. Well once you're a Nebraskan, you're always a Nebraskan. His name is Will Evel (spelling?), and he works out of

Washington on this matter. And if you'll call me sometime later in the week, I can give you his phone number. But they have a group of people on a national level who are working on how it is we can make it easier for the people in the military and those supporting the military in a civilian capacity can actually vote. So I call that to your attention as something that might be useful, if not in the plan, at least useful in the process of conducting elections. The other thing I was going to suggest today, several states, in their plans, have adopted this procedure and the most notable and most recent, is our neighbor, South Dakota. Secretary of State, Chris Nelson, up there, in their plan, they have instituted the requirement that all of the new voter instructions would be published prior to each election cycle as a part of the legal requirements and of legal publications in their state. And they find this will be...they think it will be useful for many reasons. First of all, by making it a legal publication, it would require that all papers publish it. Number two, it would be found in the normal location where people look for these kinds of things and these kinds of notices. And number three, as the election official, or the official whose jurisdiction they might be in, for example, a county. They would actually receive an affidavit of proof of publication that could then be used in case there are any questions about the requirements of voting, the instructions, or in case of law suits, recounts, and all of the other things that happened in Florida. You would have actual notice by form of an affidavit that a legal publication was published in every newspaper in every county, setting forth all of the new rules, the procedures, and the voter instructions. And I think that would be useful and helpful. Obviously it would cost a little money out of the plan because legal notices, there's a statutory rate that they're required to pay. For your benefit, and for the benefit of the commission, and for the facilitator, I would submit as an exhibit, the state...proposed state plan from South Dakota, which in two locations, or two categories, talks about their proposed requirement to have legal notices on voter instructions. So with that, I'd be happy to take any questions, if there are any, from you or members of the commission. If not, I want to compliment you and all who have been involved in this process. You make Nebraska proud.

JOHN GALE:

Thank you, Mr. Beermann. We certainly appreciate your taking your time to come and join us and participate in this as a former Secretary of State for 24 years, you've had a lot of experience with the election system and we appreciate your comments on it. With regard to the portion of the plan contained in the South Dakota plan, we certainly will take a look at that. Nebraska law, as you know, does currently require that if there are any initiatives or petitions that are going to be in a general election, that those do have to be published statewide. So we have some similar requirements in state law now. So...

ALLEN BEERMANN:

That's correct.

JOHN GALE: ...we will take a look at that and we appreciate your bringing it to share with us.

ALLEN BEERMANN: Can I just hand this to Martha?

JOHN GALE: Certainly, that would be great. Neal, if you could...Mr. Erickson can take that.

ALLEN BEERMANN: Any other questions? Thank you for your courtesy.

JOHN GALE: Thank you for your testimony.

ALLEN BEERMANN: And good luck in your work and your efforts.

JOHN GALE: Thank you, Mr. Beermann. Now we do have some parties, I think, who are from out of town. Jay Stoddard from Grand Island, would you like to come forward, in case you need to get back to your hometown? Are there any others from out of town? Okay, and you...please identify yourself.

NYDRA KARLEN: Nydra Karlen.

JOHN GALE: And do I have...oh, I do have you, okay. And you're from?

NYDRA KARLEN: I'm from Omaha but my grandkids are in swim lessons so I have to be there in time to pick them up.

JOHN GALE: Oh, well so, well maybe Mr. Stoddard would defer to your testimony first then.

NYDRA KARLEN: No, that's all right, go ahead.

JOHN GALE: Okay

JAY STODDARD: Mine won't...

JOHN GALE: Then we'll have Mr. Stoddard, and then we'll have Miss Karlen. Okay.

JAY STODDARD: Mine won't take very long. Jay Stoddard is my name. I'm from Grand Island, Nebraska. I live at 1810 West Charles. I've lived there for 47 years and I've always been a Nebraskan. The comments that I'm...

JOHN GALE: Would you go ahead and have a seat, Mr. Stoddard...

JAY STODDARD: Yeah, okay.

JOHN GALE: ...so you can speak into the microphone, we'll get that recorded. Thank you.

JAY STODDARD: The comments I have are very brief. In 1964, the Civil Rights Act was passed. It allowed everybody to vote and not pay poll taxes, or things such as that. Then the Voting Rights Act of 1965 was passed. I would like to read a letter that I gave you, Mr. Gale, at the Canvassing Board meeting. And it's very short. There seems to be a lack of transparency in the vote counting machines and software with no way to check the accuracy. The machines with proprietary software appear to be in violation of Nebraska's Constitution, Article I Bill of Rights, Section 2.2, stating that there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise. Integrity of vote counting is an integral part of voting. The persons programming that machines are unidentified and secretive and unaccountable. Measures should be taken to correct this situation. Watchfulness is a duty of every citizen. Sincerely, Jay Stoddard. Vote counting machines in the United States of America has had much criticism. I'm sure more criticism than it deserves. Everyone has an opportunity and right to vote in the United States of America. Whether you be poor, whether you be rich, whether you be disabled. It is my feeling that everyone in the state of the United...Nebraska, in the United States, should have and demand that their vote be cast and properly counted with auditable recounts available. And that's my comment. It's the greatest freedom we have and privilege that we have as citizens of the United States. And I am hopeful that this time in the United States of America, that we can do it right so we don't have all of the misgivings from people. I think that's one of the reasons people don't go to vote, is the standpoint that they think it won't make any difference. It's already been decided. I don't think so. That's a privilege that we all have. Thank you very much.

JOHN GALE: Mr. Stoddard, just for clarification, is your testimony then in opposition to any form of electronic voting that you prepare...you prefer a paper trail, a paper balance.

JAY STODDARD: I prefer a paper trail of some kind so that votes can be verified on a recount system. That's basically what I'm doing. I think that's a demand that citizens would all feel is important. Whether you live in New York...how many times have we heard that the election has all been decided east of the Mississippi? A lot of people in California feel that the vote has already been decided. So there are numerous things that have to be taken into consideration. But I want there to be an auditable trail of some kind, paper trail so that recounts...

JOHN GALE: You're touching on a very interesting issue because under HAVA, it hasn't yet been clearly resolved whether electronic voting equipment, like what they call the DRE, needs to have a paper confirmation or verification of each vote. And we have, as I believe, certified some equipment, have we not, Mr. Erickson, that has that capability where a person will vote electronically and then it will produce a little paper receipt, in effect...

JAY STODDARD: Just like an ATM machine.

JOHN GALE: Right. So that for recount purposes, you're not relying upon the electronic memory, you have this accumulation of, I'll call them receipts or invoices, for want of a better term, that are in the machine and are secure within the machine, that can be used for recount purposes. So, you touch on an interesting point and there are strong arguments on both side whether that's needed or not. So I...that's why I wanted clarification. Thank you.

JAY STODDARD: I thank you very much for being able to appear.

JOHN GALE: Thank you for coming from Grand Island. I'll know of your great interest in the election process and we appreciate it. Thank you. Yes ma'am, Nydra Karlen.

NYDRA KARLEN: Yes, my name is Nydra Karlen, I live at three...

JOHN GALE: Could you spell your last name for us, please.

NYDRA KARLEN: K-A-R-L-E-N. I live at 310 Fawn Court in Bellevue, Nebraska. I'm also the state chair of the Libertarian Party of Nebraska. My first experience in voting, as a registered Libertarian, was in a primary where my ballot was not placed into the secured ballot box, but rather placed in a manila envelope and laid on a nearby table. The election official was positive that it should not be placed in the ballot box. One presumes, with the real party ballots. And I equally positive that it should. He won. And when I returned home, I called the Douglas County Election Commissioner; I lived in Douglas County at that time. And he promised to make sure my ballot was placed in the ballot box where it belonged and that it was counted. Do I know if that happened? Well, no, I have no way of knowing whether it was counted or not. The poll workers were not trying to discriminate against me. They were just uninformed or misinformed. My point is that, I know how frustrating it is to be denied the right to know that your vote will be counted. I now work as a poll worker at my new residence in Sarpy County. Your appointments to the commission included representatives of minority designation. Now who has a smaller minority standing than third parties in this state? But we learned of this commission in the newspaper only when this hearing was announced. Were there any third party representatives on your commission?

JOHN GALE: We didn't...I guess I would have to say that the buck stops with me but I did not attempt to try to appoint a representative of every possible political party. It seemed, first of all, that was not the focus of HAVA. The focus of HAVA was more an access for persons of the population such as the disabled and the visually impaired who are having difficulty securing a private, non-assisted ballot. It was not an attempt to bring in all of the different political parties.

NYDRA KARLEN: I thought it was with minorities too. It's not with bringing in minority voters?

JOHN GALE: We did have members of minority groups, we did.

NYDRA KARLEN: And like I said, I think we're a minority. Third parties have a tough electoral road. First, we have to maintain our ballot access, which requires we garner five percent of the vote in a statewide race every two years. This may seem easy, but consider 2004 when our only hope is to win five percent in the first, second, and third congressional races. There is no statewide office open and no Senator up for reelection. As a result, we will need to again petition and maintain our status and that costs tens of thousands of dollars. And to place these candidates on the ballot, we must pay one percent of their annual salary or approximately \$1,600 each. We've already spent many thousands of dollars and have not reached one voter with our message. When you are a small party, the challenge is daunting. Raising funds for our candidates is difficult too. No donor wants their name to stand out on a disclosure list. Incumbent politicians use their ability to bestow government handouts and pass harmful legislation to subtly coerce people into financing their campaigns. As a result, many businesses, wealthy individuals, and special interests contribute preferentially to incumbents, even if they prefer a challenger's stand on the issues. For many contributors with vested interests, it is vitally important to not offend the incumbent office holder lest government favors be denied or harmful legislation passed. Worse still, even though most of the money goes to incumbents, many contributors hedge their bets by giving to both major parties, even though these parties are supposed to be...to represent polar opposites. As a result, political contributions have become a form of insurance instead of an expression of deeply held convictions. What I just read is an excerpt from something that I would like to put...place into the record, which is from realcampaignreform.org., "What you should know about our election system".

JOHN GALE: Does this have your name or some...

NYDRA KARLEN: Yes, it does have my name on it.

JOHN GALE: ...some individual that can be contacted with reference to that document?

NYDRA KARLEN: Yes, it does.

JOHN GALE: Thank you.

NYDRA KARLEN: Um-hum. Dissident candidates, like Eugene McCarthy, the Democrat who ran against a sitting President, Lyndon Johnson, on the issue of ending the Vietnam War, had no party backing but some few select deep pocket donors. The FEC effectively silenced all dissident candidates, unless independently wealthy, by defending them. Newspapers and television can decide that our

candidates, our Libertarian candidates have no chance to win, so they never air their ideas or their names. The Omaha World Herald online edition created a sample ballot and did not put the Libertarian names on the ballot. So we are...we feel we are discriminated against by the press. The Libertarians are members and will appear before the Supreme Court in September to speak in the suit on the Bipartisan Campaign Reform Act. I'll not go into this issue except to say, be advised that most Libertarians do not believe that incumbents should be able to pass any campaign restrictions, as they generally become incumbent reelection laws. On the issue of fairness in the electoral system, may I make you aware of instant run-off voting. Instant run-off voting or IRV, is a simple voting method used to select a single winner from a list of two or more candidates. By collecting more meaningful information from voters, it gives them a greater power of choice and measures their will more accurately. Invented in the United States, this method has been used in Australia and Ireland for many decades now. With one ballot, the voter ranks their choice for office. We are all familiar with run-off elections where lower ranking candidates are eliminated, but these are expensive. Instant run-off voting allows voters to rank the candidates they find acceptable. To determine the winner, voters first choices are counted. Votes for the last place candidate then are reallocated to the second choices on their respective ballots and this process is repeated until someone has a majority. An example of a congressional race with parties one, two, three, and four, party one gets 40 percent, party two 38 percent, party three 15 percent, party four 7 percent. No one has a majority so party four candidate is eliminated and let's say all of party four second place votes go to party one. That changes the percentage to party one getting 47 percent, party two 38 percent, party three 15 percent. Still no majority, so party three is eliminated. Let's say the candidates second place votes give 13 percent to party two and two percent to party one. Party one gets 49 percent, party two gets 51 percent. Whereas party one would have won without instant run-off voting, now party two wins. It's a better reflection of the electorate's will. People will be assured that they can vote for a smaller party and still have their vote count towards electing the lesser of two evils. One of my members told me during the 2000 election, that although he wanted to vote for Harry Brown, he was concerned that the 2nd Congressional District could conceivably go to Gore. So he voted for President Bush. Nebraska and Maine do not have a winner-take-all Electoral College. Nebraska has a grand tradition of innovation and initiative, this is why I present this idea of instant run-off voting to you, as the commission, for consideration. I know it's late in your process, but in today's electoral system, we often hold our nose and vote the lesser of two evils. Nebraska can change that. If there is a concern about voting tabulation, I'm sure Australia and/or Ireland have computer systems we could purchase that would automate the process. Since scanners are under consideration, this might be a time for a change.

JOHN GALE:

I'm going to need to give you a three minute warning too.

NYDRA KARLEN: Okay, I'm almost done. As a state chair, voter participation information would be extremely helpful in the files that we receive from your database, Neal. To communicate with registered voters, the frequency of their participation would be very helpful. We do, as you know, get the CD of registered voters as a party. I also have an IT background and would love to work on the design or selection of a system and its implementation, or at least provide input to your commission if you decide to purchase a statewide database system for your keeping your election information...your, excuse me, registered voter information. I'm also an Enron retiree so any grants for voter education, especially on campuses, would be helpful to my personal financial situation. The Libertarian Party is a non-profit and I do not receive any salary for my duties. A few years ago as a project manager for Servnet, a consortium of social service agencies in Omaha, the project phase I managed created a shared database of client information for Family Services, Charles Drew, Chicano Awareness, and others, and coordinated with attorneys and client...on client privacy, Health and Human Services, and United Way. I negotiated for a server to be located at UNO's data services location and high speed access for the agencies. So I do have some experience in this area if I could be of any help or work on this project, I would just love to get involved. Thank you very much.

JOHN GALE: Two comments I'd like to share with you. Number one with regard to your personal experience where you felt that your vote was segregated and maybe...

NYDRA KARLEN: Well I know it was.

JOHN GALE: ...not counted.

NYDRA KARLEN: Yeah, I know it was.

JOHN GALE: This reaches somewhat into the area of provisional voting, which is a mandate of the HAVA Act because there were estimated to be some two million voters across America who were challenged on their registration and never knew whether their vote was counted or not. So provisional balloting is part of the HAVA requirement and mandate that each state have a system so that if an individuals ballot is challenged, rightly or wrongly, by a poll worker, that that individual will have a chance to double check, either by an 800 number or toll-free telephone line or a website, to know whether that vote was counted or not the next day, when their registration was double checked. So that may not have exactly been what they were doing with your ballot.

NYDRA KARLEN: This was eight years ago.

JOHN GALE: Um-hum.

NYDRA KARLEN: The first time that I voted Libertarian, I believe it was eight years ago. It might have been eight years ago, or four, but it was before this was passed.

JOHN GALE: The idea of the provisional balloting is that so a voter doesn't vote...

NYDRA KARLEN: Yes.

JOHN GALE: ...see their vote segregated...

NYDRA KARLEN: Yes.

JOHN GALE: ...and wonder why and never know if their vote was counted.

NYDRA KARLEN: Right.

JOHN GALE: They will now know, in the future...

NYDRA KARLEN: Right.

JOHN GALE: ...if that ballot was counted and why. And if it wasn't, they'll have a right to challenge that. So, that issue was somewhat addressed. With regard to your idea of instant voter...

NYDRA KARLEN: Run-off voting.

JOHN GALE: ...run-off voting, that's one of many interesting ideas that are out there and in discussion. Same-day registration is another one of those issues, satellite voting is another issue. The Legislature, and I think Senator Schimek is with us, chair of the Government and Military Affairs Committee for the Legislature, which committee handles election issues for the State Legislature. And that committee recommended, and the Legislature approved the creation of a blue-ribbon committee to investigate the causes of low voter turnout. That committee will be up and running before the year is out and that's the type of idea that might well be presented to that committee as...

NYDRA KARLEN: Well if she would like to contact me, I'd be more than happy to come and testify.

JOHN GALE: Thank you. Appreciate your appearing today too. Thank you, Miss Karlen.

NYDRA KARLEN: Thank you.

JOHN GALE: And I do see that Senator Schimek is on our list of parties to testify. Senator Schimek, if you would like to come forward now. Good morning.

DIANNA SCHIMEK: Good morning, Mr. Secretary of State. I hope all is well with you.

JOHN GALE: Thank you, it is.

DIANNA SCHIMEK: For the record, my name is DiAnna Schimek, I represent the 27th Legislative District in the Legislature. And I am here today to, first of all, compliment you on the plan. And also to thank the commission for all their hard work. Now, I'm not thanking myself. I was a member of that commission but we were in the middle of the legislative sessions so I only participated once and it was for a brief period of time. I did send my staff over several times but, I think the commission put together an excellent recommendation to you and I think the plan is very thorough and very readable and very good. Having said that, I have two suggestions to make. And the first one is on the language on Page 11 and it refers to the initiative that you just mentioned, the blue ribbon panel. And I want to note for you that the committee changed that terminology, blue ribbon panel, to Vote Nebraska Initiative. The intent is still the same, but they like the idea that we would be talking about how we get Nebraska out to vote. And if you recall, our election taskforce actually talked about that initiative. And the idea is to challenge Nebraskans to get out and vote and to find ways to do that. It's also LB 358, it was originally LB 153, but it was amended into LB 358, which was another election bill, before it actually went to final reading. So, that was...

JOHN GALE: I do apologize for the use of the term "blue ribbon". I knew it had a new name and I couldn't remember what it was, so thank you.

DIANNA SCHIMEK: That's what it is. So, I just wanted to put that into the record. The other thing that I would like to talk about is a little bit more substantive and it's on Page 9. And it is the Section A under Section...it's Section IIa under II. And it's that whole paragraph about making funds available to develop a grant program to encourage voter participation and education. And I have two questions about that. First of all, I'm wondering if the language in this paragraph will create any constitutional issues. And it says that such grants should be limited to non-governmental, not for profit organizations serving effective...affected voters. And I'm wondering if this would apply to, you know, any religious groups. The previous testifier just mentioned, I believe, that this might be available to a particular political party. I'm not sure that that's the intent here and I didn't...I never envisioned, myself, that political parties were 501(3c) organizations. I don't know if we need to clarify this language or not, but I would suggest that such grants should be limited to entities or organizations serving affected voters. And then perhaps your office or the Vote Initiative Taskforce could clarify who that actually refers to. I don't think it's clear enough in this language and maybe, as long as the intent is to make it clearer later, that's okay. That would be my first question about that.

JOHN GALE: Mr. Erickson, will you be addressing that in your remarks?

NEAL ERICKSON: I can touch on that.

DIANNA SCHIMEK: Okay, okay. And then, I also...I'm not questioning, but I am just wondering how the \$60,000 a year was decided, if that is set in stone or again, if that should be given some further thought. So anyway, that is...those are the extent of my remarks. I think it's an excellent plan. It has accountability written into it, as I believe is required by HAVA in follow-up. And I think that it will work.

JOHN GALE: Senator, we know how full your plate was during the legislative session and we know how conscientious and dedicated you are to the election process and you did what you could do at the time. But I know you and your staff were keeping track of the documents as they were prepared and processed and you've all continued to serve very valuable input as we go on from here. We'll check on the things that you've raised...

DIANNA SCHIMEK: Okay.

JOHN GALE: ...and try to address them.

DIANNA SCHIMEK: And thank you very much.

JOHN GALE: Thank you, Senator.

DIANNA SCHIMEK: Appreciate the opportunity.

JOHN GALE: Thank you. Mr. Erickson, would this be a good time, or shall we complete public testimony.

NEAL ERICKSON: (Inaudible)

JOHN GALE: Are there any others here to testify who aren't members of the commission. There's a Sandra Powell and a Mary Angus and a Don Eret. Are they here? Why don't we go ahead and complete them, Mr. Erickson, and then you can testify before the members of the commission testify. Is anyone on a tight schedule amongst the three, Don Eret, Mary Angus, and Sandra Powell? Who would like to come first? Sandra Powell? Mary Angus? Have a seat and give us your name and address and any association with a group that you belong to and spell your last name, please.

MARY ANGUS: Yes, thank you, Secretary of State, and commission members, and citizens of Nebraska. My name is Mary Angus, A-N-G-U-S, just like the cow, and I am from Omaha, Nebraska, 2304 Nelsons Creek Drive. I represent a group...well I represent so many groups I'm not going to go into that. But I'm actually speaking on my own behalf. So, one of the things that I see in your plan for planning actually, is to clarify the term mentally incompetent.

You may or may not be aware of a Lancaster County voter registration activity that was conducted by the Mental Health Association of Nebraska in which, I'm not even sure of the number, but many, many people with mental disorders were registered to vote who had to previously been registered. Of the registered voters that were registered during that time period, not during the last mayoral election, but the previous election to that, the voter turnout for those folks was 78 percent. So the project was highly successful in getting new registrants and getting them to turnout in one of the lowest turnout elections of Nebraska's history. I believe that people who have been legally adjudicated to be mentally incompetent by mental health boards or the like, may or may not necessarily be able to vote. And I'm not sure that that is a good reference for the decision to exclude us as voters. I am not...I'm not under a guardianship or...and have not been adjudicated as such. But to be adjudicated as mentally incompetent or as legally incompetent, it really requires only that you not be able to take care of your own financial and day-to-day living and may need a payee for SSDI or SSI requirements. It does not necessarily mean that you can't make a decision about who you think should be in office. And so I would strongly recommend that you look at other ways of determining that, as that group of people have a large investment in the voting process, and that so many of the laws, especially in the previous session had to do with their futures, especially those of low-income. And so I would just ask you to make sure that that gets accomplished. And I'm probably your, what your...not your blue ribbon committee, but your Voter Initiative Committee. That would be my main comment and I thank you for allowing me to speak here today.

JOHN GALE:

Well certainly, one thing that we want to continue to accomplish, is a widening, a broadening, an inclusiveness of our voters, and so that there is not any institutional discrimination or prejudice against any particular group. I served as chairman of the Mental Health Board in Lincoln County for ten years and I know what you're saying because, people would come before the board and they needed to be determined to be mentally ill and a danger to themselves or to others. And if they were people who were perfectly fine on their medications, stopped their medications, immediately became a threat to themselves or others, would appear before the board. Once they were back on their medications, they could function pretty well, similar to anyone else in society. So, it's a pretty arbitrary definition, once a board makes that declaration to place that person in protective custody for help, subsequently released back on medication, certainly competent to make decisions but, still precluded from doing so. So it's an issue that needs attention. I certainly agree.

MARY ANGUS:

Well I am very happy to hear of your experience in that making some understanding of the situation. Thank you.

JOHN GALE: Thank you for appearing, Miss Angus. Sandra Powell or Don Eret. Sandra Powell. If you'd identify yourself, your location, and any organization that you're associated with, and spell your last name for us.

SANDRA POWELL: Yes, sir. My name is Sandra Powell, P-O-W-E-L-L, 16902 180th Street, Springfield, Nebraska. I am the president of the League of Nebraska...or League of Women Voters of Nebraska, and it is that organization which I'm representing here today.

JOHN GALE: Thank you.

SANDRA POWELL: Secretary Gale, the League of Women Voters, Nebraska, thanks you and the commission for your work to implement the Help America Vote Act of 2002. The League has long advocated strengthening voters rights and election systems and applauds your efforts to ensure the enfranchisement of all eligible citizens, and to encourage efficient management practices. The Act impacts every part of the voting process. Most of the current press attention on voting reform issue has focused on problems that could be solved with purchasing new voting machines. This is far from being the most significant problem facing voters, especially in Nebraska, and we support consideration of other needs first. The cost and design of voting machines may improve in the future. The League supports all the education components of the Act and think these are key to it being successful. Voters do need to be informed of their rights. They also need instruction on the basics of voting and the processes involved. As we continue to work to get the non-voters to the polls, this need is most apparent. Direct mailings and personal contacts have the most positive impact on non-voters, but all methods of reaching citizens are needed. This includes educating citizens with felony convictions above...about their voting rights and procedures by which these rights may be restored. Education and training of election officials and poll workers is important in the voting process reform. There should be a statewide training guide to ensure uniform and non-discriminatory treatment of voters throughout the state and in each polling place. We're encouraged that each state will have a centralized electronic list of eligible voters. This should help ensure that there are statewide standards and practices for accepting, processing, and correcting voter registrations and notifying voters. With a centralized list, Election Day registration could be enacted, which could increase voter turnout and reduce the need for provisional ballots. The League of Women Voters of Nebraska appreciates the recommendation that there should be continued review of the plan for future improvements. We urge you to do so while keeping the spirit of the Help America Vote Act in mind. That is, encourage enfranchisement rather than disenfranchisement. Thank you very much for your time today.

JOHN GALE: Miss Powell, thank you very much and as a representative for the League of Women Voters, I would like to express our appreciation in every face of this

process that I have been involved in working with the government committee, the State Legislature, our voter...our Election Reform Taskforce that met for two years with Senator Schimek and myself, the League of Women Voters has been deeply involved in every one of those steps and we appreciate all of the input and help we've received. So, thank you for appearing today.

SANDRA POWELL: Thank you.

JOHN GALE: Do you have written testimony you want to submit, Mrs. Powell? Or are those just your personal notes?

SANDRA POWELL: These are our personal notes. However, if you would like it in this format, you're welcome to it.

JOHN GALE: Well, it'll be part of the record that's been transcribed. I just didn't know...I thought maybe you had some supplemental...

SANDRA POWELL: Not at this time. However, would we be allowed to submit more in the near future?

JOHN GALE: Certainly, Mr. Erickson, when's the deadline they...30 days through...

NEAL ERICKSON: July 10th.

SANDRA POWELL: July 10th.

JOHN GALE: Through July 10th.

SANDRA POWELL: Okay, we would like to entertain the possibility of submitting more.

JOHN GALE: That would be great.

SANDRA POWELL: Okay, thank you.

JOHN GALE: Thank you for being here today. And now, Don, Don Eret.

DON ERET: I have copies for everybody (inaudible).

JOHN GALE: Well thank you.

DON ERET: Secretary Gale and members of the State Plan Commission, my name is Don Eret, spelled E-R-E-T. I am an associate chair of the Saline County Democratic Party. I commend your commission on your effort to adapt Nebraska's election laws to Help America Vote Act of 19...of 2002. As a former State Senator, I have familiarity with reviewing and analyzing state and federal statutes. I feel that Congress has overemphasized and

overextended the use of technical...technological voting devices to accomplish the rather simple act of ballot voting. I will address today the specific function of vote counting and the disconnect that I see between your stated vote auditing goals on Page 13 of the Preliminary State Plan and an existing state statute. I became specifically familiar with Statute 32-1119 (Section 6) on recount procedure in the course of the 2002 general elections. Statute 32-1119 (Section 6) states that in counties with vote counting devices that paper ballots shall be recounted with the device. This pertains to half of Nebraska's counties that have 90 percent of the state's registered voters. The history of the statute is that it was enacted in 1981. A review of the public hearing and floor debate transcripts on that measure indicate that not a single word was addressed to that measure in a multi-issue bill. It was enacted into law as it was drafted by the Secretary of State's Office, with no legislative discussion. This banning of access to the paper ballots for a hand recount is a violation of the vote counting audit provisions of the Voting Rights Act of 1965. Last year, 2002, the Legislature enacted an amendment to this statute, LB 1054, Section 29, further compounding the illegality of a state statute that is already in violation of the federal mandate. The Statute 32-1119 (Section 6) should be amended to simply state that paper ballots shall be hand counted for all election recounts conducted in Nebraska. If this statute change is not enacted prior to implementation of Nebraska's proposed state plan to conform to the Help America Vote Act of 2002, the state will be subject to a citizens' lawsuit charging the state with misappropriation of public funds to sustain an illegal vote counting procedure for recounts. Statute 32-1119 (Section 6), as it is now written, to ban access to hand counting ballots for an election recount is festering a distrust of the proprietary vote counting source codes used by private contractors to program vote counting devices for the county clerks and election commissioners. There is no visible precaution to prevent the manipulation of vote counting. If there was general knowledge of a legally qualified and adequate statute that paper ballots can be, and will be, hand counted in a recount, there would be neither temptation nor suspicion about vote count tampering. So at this time I anticipate there might be questions on my testimony and I'd be glad to answer any of your questions.

JOHN GALE:

Well, sir, you address some interesting questions, and they are questions that have been debated and will probably continue to be debated. There certainly is a portion of the population that is distrustful of electronic voting and electronic voting memories without a paper ballot record. Many of the new devices, as I discussed earlier, that are electronic voting devices, will actually have a paper record for recount purposes. So, it's one of those cusp issues on which there is a strong opinion on both sides. And appreciate your being part of that debate and participating in it. I will probably ask Mr. Erickson to address the issue of recount in his testimony. I believe that we are constitutionally sound at this time. But as we move into this new era of HAVA, there may be some constitutional issues that he'll want to address. And hopefully you'll be here for his testimony.

DON ERET: Well I might add that I think that Nebraska probably has the best of the systems right now, the optical scanning. You've done away with the punch cards and you've done away with the lever machines in the state. And even though the optical scanning of ballots has a, to my notion, an illegal aspect in that there's proprietary computer programming involved in those counters, you have the paper ballots that you keep for 22 months that are available that they could be properly audited and I think the state statute needs to be revised to make that fully possible. And that there be no questions about if there's tampering and manipulation going on.

JOHN GALE: Philosophically and legally, certainly you could require that the paper ballots used for central scan equipment could be hand counted in a recount. But when you...if you talk to Lancaster County or Douglas County about hundreds of thousands of ballots that suddenly have to be hand counted rather than centrally scanned, you'll get into a debate about the costs of such a process and whether or not it actually is more inaccurate than simply recounting with the same equipment on which it was originally counted. But those are subjects we'll save for another day. Appreciate your testimony and this will be part of the record.

DON ERET: Well, I mean, you have...you already have statutes that provide for...you have automatic recounts when it's within one percent. And then if anything else we talk about in terms of recounts involves where people have to pay for their recounts. So, I mean it can...I mean it'll be adequate...I mean if somebody really wants to do the recount, I mean, you have the provision to do that by paying for it. But you just don't have access to the paper ballots to properly audit then. That's my point in my testimony, is that this law was never legislated, it just got...it just appeared through without a legislative process and we have it and it's...I think it's the bottom of a huge problem of people who are going to just...this problem's going to grow. And there are websites all over the United States just mushrooming, talking about similar things and we have a case of it here right in Nebraska I feel. So thanks, thank you very much.

JOHN GALE: Thank you, Mr. Eret, appreciate your coming to testify. Well, I want our members of the commission, if possible, to hear Mr. Erickson's testimony. On the other hand, if any members of the commission here, who have signed to testify, Kathy Hall, June Remington, and...am I missing someone? Kathy and June, Senator Schimek has already testified. Would you prefer to go ahead and testify now, Kathy, and then you can hear Mr. Erickson's remarks? Okay. If you would like to come forward. Yes, ma'am?

UNKNOWN WOMAN: Yes, are you then closing the individual testimony? I was (inaudible)

JOHN GALE: Well not necessarily. Oh, well, why don't you come forward and...

UNKNOWN WOMAN: Sure.

JOHN GALE: ...please sign the list.

UNKNOWN WOMAN: (Inaudible).

JOHN GALE: No, we're not trying to exclude anybody.

UNKNOWN WOMAN: Of course not.

JOHN GALE: We didn't realize you'd come in late. Thank you.

UNKNOWN WOMAN: Well you can't realize that everybody walks through the door also wants to testify so, no harm no fowl.

JOHN GALE: If there's anyone else who has come in late who would like to testify, or someone who's been here for awhile and would like to testify, please sign this same sheet so I can keep track. Kathy, if you would identify yourself and your organization.

KATHY HOELL: My name is Kathy Hoell, H-O-E-L-L. I live at 7301 Sarpy Avenue in Bellevue. I'm with the Statewide Independent Living Council, and I was also a member of the State Plan Commission. In the past, I have been very outspoken about the need to make the voting process accessible to all. And I think this plan will bring it closer than it's (inaudible) to penalize people...

TAPE MALFUNCTION

JOHN GALE: Hopefully all this great conversation I see in the room is developing some new and exciting and creative ideas for election reform, and that they'll be shared with the rest of us at some point. We're actually very, very pleased with the turnout today. We really had no idea whether we would have a good turnout or not and it's a terrific turnout, and a lot of interesting testimony. So, we'll proceed now with the remainder of the public testimony. June Remington is now in the witness chair, and then J. Rock Johnson will testify, and then we'll have Neal Erickson testify. So June, if you'll identify yourself and who you're with and your last...spell your last name.

JUNE REMINGTON: Thank you, Secretary Gale. My name is June Remington, R-E-M-I-N-G-T-O-N. Professionally, I'm the director of the Lincoln Area Agency on Aging here in Nebraska. I have eight counties that I'm supervising. But I'm here as an individual, testifying on behalf of this report. I've had the privilege to serve as a member of the Secretary of State's commission to develop a state plan that will allow Nebraska to implement the provisions of the Help America Vote Act. The members of the commission spent time and mental capital developing the recommendations that are contained in this plan. I believe that all the members of the commission share

concerns regarding the increasing tendency of eligible persons in our state, as well as the country, to discard their opportunity to participate in the democratic process of electing leaders locally, statewide, and nationally. Therefore, the primary issue, from my perspective, was the intention to create a system that would allow, no, encourage all eligible persons to participate in the democratic process of voting, regardless of their location or their physical limitations. We also ascribed to the tenant that every vote should count and that persons who believed they were registered voters had the opportunity to vote on Election Day, in a way that their votes would be counted when and if it was proven that they were registered. And we also wanted to provide a remedy for a person who may have made a mistake on the ballot to correct that mistake in a way that protected the validity of the voting process. As the Help America Vote Act is a product of the federal government, and we have witnessed passage of laws that dictate to state and local governments, provisions that require increased spending, we were adamant that these costs be borne by the federal funding provided in the Act. The commission members are aware and have discussed the potential changes that may occur in the voting process over the next decade and more. Technology may offer options that Nebraska may want to consider as time and computers become more prevalent. We even discussed voting by mail, as is done at least in one other state. Our plan encourages consideration of these options as time progresses. I'm pleased that these recommendations have been addressed...have addressed the issues of inclusiveness and accessibility. They've also addressed the education of poll workers, acquisition of appropriate equipment to allow those with physical handicaps to vote, and have recommended, to the extent that we were able, allocation of funds for this purpose that were expected to come from the federal government. I believe this is a well considered plan that has the potential to increase the interest and participation of Nebraska voters. I'm pleased to be a part of the team that brings these recommendations to the public for review. Thank you for your consideration.

- JOHN GALE: Miss Remington, thank you for your participation on the commission. You were certainly one of those who made a point of attending virtually all of the meetings and participating, and we thank you very much for your input and for your representation of the elderly citizens of Nebraska and their special needs.
- JUNE REMINGTON: It was an honor, thank you.
- JOHN GALE: Thank you. Thank you for your testimony. J. Rock Johnson.
- J. ROCK JOHNSON: Yes, Secretary, my name is J. Rock Johnson. That's initial J. Rock, R-O-C-K, J-O-H-N-S-O-N, and I live here in Lincoln, Nebraska. I want to express my appreciation to all who have been involved in this endeavor. It's taken time, it's take thought, it's taken working together, and I think that we

have a good base upon which to build. I must say that my suggestions are going to have to, God willing and the creek don't rise, as we say, come in in writing because I was only got access to the report just yesterday. I want to say that I am a member of the Board of Directors of the National Association of Protection and Advocacy Systems Incorporated. It's an organization for the protection and advocacy agencies. Each state has one. In Nebraska, it's Nebraska Advocacy Services. I'm a former board member and I currently serve on the Protection and Advocacy for Individuals with Mental Illness Advisory Council, otherwise known as PAMI (?), but we're working for an acronym free environment, which is APE. (Laughter) I'm currently a member at large of the NAMI, formerly the National Alliance for the Mentally Ill Consumer Council, and a former national board member, and former president of NAMI in the state of Nebraska. In addition, and perhaps with (inaudible), although I would have had an individual specifically representing the concerns of people with mental illnesses on the commission. But of course the easiest thing to do, is to make a suggestion after the fact, when you've had a chance to review. And I wish I could quote it, I think it's Teddy Roosevelt about, Don't give the guy in the ring a hard time while you're sitting on the sidelines. Because that's the person who is really in there running risks and taking chances. So it's easy for me to say to you, this position might have been helpful to have had that sort of representation. But I don't see that that has had a negative impact, for others on the commission has recognized the concerns around those provisions of competency. So I feel nonetheless, that our interests are well represented. Did I say that I'm the vice chair of Nebraska's statewide Independent Living Council?

JOHN GALE: I don't believe you did.

J. ROCK JOHNSON: Well, I am in fact. And it's my pleasure and privilege to work with Kathy Hoell as chair of that organization. Now public law 107-252 (?), which is our enabling statute, also grants to the state protection and advocacy system, which here would be Nebraska Advocacy Services, resources to assist individuals with disabilities in the voting process. I appreciate that the Nebraska Advocacy Services, in the form of our executive director, Tim Shaw, was a member of the commission. I am very, very pleased to have been the recipient of a newsletter, from your office. I hope that this is the first of a series of information that you're sending out to people. And if other folks in this room didn't get it, I suggest that you storm, in a most respectful way (laughter), Secretary Gale and get your name on the list. One of the things that jumped out about me, and I thought, this is really creative and a lot of work has gone into this, is the activity to promote youth citizenship and youth commitment to voting. So a program has been developed around the narrative of Bernie Nyder (spelling?) I believe is the name. He's one of the first folks off the boat on Omaha Beach during the Normandy Invasion. And his story has been woven into a 60 minute video called, Vote in Honor of a Veteran. And the hope and expectation is to get this tape released this

summer for use with every high school government teacher. Well when I received this, and this is only point six out of seven points, just an excellent source of information of what's happening in the Secretary's office. I believe we have never been gifted with this information, nor have we had an administration who was so interested in being transparent and sharing this information. But frankly what occurred to me, is I'd like to see a 20 minute video with a facilitator and student guide. War is the breakdown of all diplomacy. Just as in a legal system, when one has to go to court, it means that all efforts of diplomacy have failed. And our legal system is really little more than war with very, very sophisticated and detailed rules and timelines. And I should like to see a 20 minute video that talks about the skills of negotiation and diplomacy which form the basis of our democracy. In our democracy, the ruling unit is 51 percent, a simple majority. And to explain the Bill of Rights. In addition, I believe Nebraska is in the forefront in this area in that we have a long history, due in no small part to Senator Landis, of incorporating the concept of mediation into our court system. And I personally believe that learning the skills of negotiation will serve one well in any circumstances, including but not limited to buying a used, I mean a pre-owned car, not a used car. So, negotiation skills is something that children should be taught from early on. When I was in school we called it civics and government. And the civics had to do with the responsibilities of being a citizen and exercising your right to vote. One thing I would ask is, does the Secretary have accessibility, has anybody done the work to compile a 50 state, and the five territories, survey of the election laws? Now one would have hoped that someone in Congress would have done that. This is what I call the 50 state sweep where you can do a cross-walk among this legislation and pick out the best for what suits your individual circumstances. So while that is...

JOHN GALE:

I could tell you, I hate to interrupt but, if you'll let me, if you'll permit me, the National Association of Secretaries of State has done this type of survey of all 50 states, as to their best practices in each area of election law. And that has been made available then back to all of the Secretary of State's offices to use as a guide in comparison as to what the best practices are from state-to-state. So there is some information of that type that is being shared today.

J. ROCK JOHNSON:

That's excellent. I'd say that you're a step head of me, but obviously you're many steps head of me in getting this work. I really appreciate the effort that's gone into this, both from you personally and from your office, and Senator Schimek's bill that was introduced to really bring this to the fore, because I'd like to say in closing, people died for the right to vote. People died in France, the French Revolution. People died in this country and we can't even, I don't know that we have an ability to come up with a number. I know when I visited the Martin Luther King Installation and saw the photographic exhibit on lynching, it came home to me in a way that had not struck me before. One of the pieces of testimony at that hearing, on the blue

ribbon commission was, concern was expressed that we were not going to be able probably to adequately get out the resources, you know, both monetary and human and material to much affect the 2004 election. I myself would subject that we, as in an organ, you pull out the stops, that we do everything that we can to register people. Such things as a mobile registration vehicle with information, and I myself frankly would volunteer for that kind of duty, because we need to penetrate even the most remote corners of our state and bring that information. Now I'm a registered person who can do the voter registration. And so I'd really like us to see, and to use the natural networks, the natural networks of the...like the Cattlemen's Association, the Automobile Association. There are many, many, many organizations in this state that actually do operate statewide. And if there could be a kind of...first it'd have to be a brainstorming about it. Also things like the lions in the sertoma (?), a brainstorm to develop some kind of plan, meet with those people, get their buy-in, get their support, because I think that it is incumbent upon us when, with all due respect, our last election was decided by the Supreme Court of the state of this...of these United States. I think that we need to, not only ensure that people have the right to vote, I have a personal axe to grind in terms of term-limits. We've got term-limits, they're called elections. And Nebraska, because of our unique unicameral, we stand to lose, and legislative aids aren't paid enough, Senators aren't paid enough, and so, as we lose our public officials with the institutional memory, we'll almost be, and I don't want to quite say this but I don't know a better way to say it, at the mercy of the lobbyists, because they're the only people who are going to have the institutional memory. So to me, the term-limits feeds right into the voting and the education process, because I must say, I voted in favor of term-limits because I didn't understand the issue. You know, that's voter education. And those things can be done on a non-partisan base. Although I wish that the League of Women Voters would make special accommodations for people with fixed and limited incomes because many of us who would like to be active are unable to afford, I believe it was a \$50 membership fee on a yearly basis. I'd like to leave you with some contact information with people in the federal government. I'm not sure what AFC means, but this information came to me...

JOHN GALE: I need to give you a three minute warning too, Miss Johnson.

J. ROCK JOHNSON: Ninety seconds.

JOHN GALE: Okay, thank you.

J. ROCK JOHNSON: Diann, D-I-A-N-N, Winford, W-I-N-F-O-R-D, at dwinford@acf.hhs.gov.

JOHN GALE: Would you repeat that one more time?

J. ROCK JOHNSON: Surely, dwinford@acf.hhs.gov. And this of course would be the federal Health and Human Services, and I suspect that these are the two staffers who are most closely involved, but I don't know what the acronym of ACF means. The other is Carla Brown, which is crbrown@acf.hhs.gov. That would be crbrown@acf.hhs.gov, area code 202-690-8332, 202-690-8332. And also given my commitment that is rapidly rising to a passion in this area, I can be reached at area code 402-474-0202. And I'll say then spell my email address which is jrock10@sprynet.com, jrock10, I say it's the only time in my life I'll be a ten, at sprynet, s-p-r-y-n-e-t, dot com. So I close by saying, I very much not only appreciate the efforts out of your office, Secretary, but also the quality and the alacrity with which you are moving on this. Thank you very much.

JOHN GALE: Thank you for your testimony. You did indeed testify before the Election Reform Taskforce and we appreciated your comments then as we appreciate them now. And we'll give your suggestions very close and proper consideration.

J. ROCK JOHNSON: And I also must compliment you on the finesse, for want of a better word, the way you reorganize, which is in this newsletter that I received. How you reorganized your office so that it can function more effectively, and we as the people have better access. So I look forward to hearing from Mr. Erickson.

JOHN GALE: Well I appreciate your comments on that and that's one of my goals in office is to be more transparent to...

J. ROCK JOHNSON: Obviously.

JOHN GALE: ...reach out to the citizens so they know what's going on in their government. So thank you.

J. ROCK JOHNSON: Well you...that's the thing, you can make things happen, watch things happen, or wonder what happened. And too often we're in the latter category. So, it helps so much, thank you.

JOHN GALE: Thank you. Mr. Erickson.

NEAL ERICKSON: Secretary Gale, for the record, my name is Neal Erickson. I'm Deputy Secretary of State for Elections. And I think my anticipated role in this process was to kind of go through the recommendations of the State Plan Commission, while I think the vast majority of the items were incorporated into the state plan developed by the Secretary of State's Office, there were a number of items that were not incorporated for various reasons. And to go through those and give members of the planning commission and the public in general an idea of why they did not, they were not included. And some of these...there is a difference in just, if nothing else, between the verbiage of

the Secretary of State's plan and the recommendations report of this planning commission. And so there will be some items in here that are also kind of caveats or explanations, whatever, however you want to interpret that. The first item I'd touch on is, in Requirement number Two, on Page 8 of the recommendations, probably about a third of the way down, the State Planning Commission recommends that the state should be responsible for purchasing equipment and any associated support maintenance. This was one of the basic tenets of the Plan Commission and the Secretary of State's Office, is the state, through the federal funding, should pick up the cost of this and it should not be passed onto the counties. I guess the caveat I'd add, at this point, it is the intention of this office to purchase and maintain the equipment necessary to comply with HAVA. The commitment however, is based on an assumption that federal government will continue to fund HAVA as anticipated. While certain areas of support will be provided, with the voter registration system for example, this support was not anticipated to include say, ballot printing costs, or the defining of the ballot. So, depending on how you interpret support and maintenance, yeah we anticipate picking up the storage, making sure the equipment's in good working order. In terms of some of the costs that are traditionally been within the county, in terms of using the equipment, such as ballot production, et cetera, those would remain with the county. Further down on that page...

JOHN GALE: If I could stop you...

NEAL ERICKSON: Yeah.

JOHN GALE: ...for just one minute, Mr. Erickson, my Page 8 is blank in my copy. I'm going to see if I can secure another copy.

NEAL ERICKSON: On top, right there, John, is one that...I don't know if everybody's Page 8 is blank. When those copies were made...

JOHN GALE: Everybody else have a blank page? You have page eight?

Conversation about missing page.

NEAL ERICKSON: Okay, maybe I ought to go explain what Page 8 contained was Requirement number Two of the HAVA requirements which require the state...it require description how the state would distribute and monitor distribution requirements payment to units of local governments or other entities. In effect, if we were to pass money through from the state to other entities, whether they'd be governmental or non-governmental, there had to be descriptions of those activities. The state plan has some recommendation...or the State Plan Commission had some recommendations on that, including a grant program that is contained within the state plan. One of the items they talked about however, was allowing the counties to apply for this debt...have

access to grants along these lines. That is something you will not find in the Secretary of State's Plan. And the reason for that is that we have 93 counties in this state. There is most probably insufficient funding to provide grants to all 93 counties. In addition, it was felt that we do not want the counties competing against each other for funding of this type. Therefore, in the state plan that was published, it limits those grants to non-governmental, not-for-profit organizations. Now Senator Schimek had commented on that and I think there might be some fine tuning of that wording. However, I do want to point out that in the development of the state plan, there was a feeling that we did not want counties competing with each other and there was not a...there was probably not a sufficient pool of money to provide adequate resources to all the counties, so that's the reason they were excluded. Now hopefully everybody has a Page 9. And I don't know it isn't...

JOHN GALE: I do have Page 9.

NEAL ERICKSON: Okay. The next item regarding these grants was a feeling from the State Plan Commission, they want to participate in the grant application evaluation, performance review, et cetera. And the state plan does not include specifics as to their participation. It is anticipated that the State Plan Commission will have a role within the grant project. However, and this would be an analogy I use, we look at the state plan as a state roadmap. It does not have...while it has the state highways and interstates on it, it does not have all the city streets in it. So some of the comments that I'll make will be things along the lines that we felt these items were too specific to be included within the state plan. Under Requirement number Two, within the state plan, we talk about establishing a grant program. It does not go into detail as to...

JOHN GALE: Mr. Erickson, could you give us a page reference for both the Secretary of State Plan and the recommendations.

NEAL ERICKSON: Okay. On Page 9...well actually Page 8 and 9, is talking about Requirement number Two. Actually, it ends up being on Page 9 on both of them, believe it or not. In the state plan, Page 9 is described as Section 2, in particularly sub-A and...well I guess sub-B also. That describes the grant process. It doesn't go into a lot...whole lot of detail how it's structured. When this grant program, as it's developed, there will be more details that are flushed out on it. I know that Senator Schimek had made a comment about the \$60,000 level and why, where that came from. When that was put together, it was...I think bottom line the \$60,000 to a degree is an arbitrary level. I think in the most...looking at the budget, I think the most optimistic level of funding for this entire program would be in the neighborhood of \$300,000. So we wanted to have a level that we could have multiple grants within that \$300,000, but we wanted to be at a level where an organization could afford to hire somebody, if necessary, to work with this program, have money left over to implement it. But the program will be...is anticipated to be, in effect, seed

money. And I think that's actually spelled out in the state plan, that preference would be given to organizations that demonstrate an ability to attract other financial resources to continue these programs. With that in mind, we came with a rather arbitrary level of \$50,000. Under sub-B in the state plan, it talks about how this...these grants are a performance audit in effect, how they are evaluated. One of the things that is a very large consideration, is that these programs will be audit by the federal government and anytime you pass money down through to another organization, you are responsible for their conduct with those monies as well. So we mandated a...well, we noted there should be a audit annually by a certified public accountant. Now we recognize these audits cost money, that was the reason for adding the additional \$10,000 on there and putting the grant cap at \$60,000. I suppose that would be open to amendment at some point in time. Section 3, or Requirement 3 deals with the Voter Education Program. One of the items of the...on the state recommendations report, Page 9 at that bottom, they'd asked that materials be made available in a variety of formats for those with disabilities and with limited English proficiency. And I use this opportunity to talk a little bit about the language requirements. While there's no specific mention of producing these in languages other than English, pursuant to the Voting Rights Act, the vast majority of materials from our office will be available in Spanish, because we do have a jurisdiction within the state that is now covered and required to have materials in Spanish. Other languages become a bit more problematic because there are no standards out there to determine which languages should be included and which should not. And to conclude languages arbitrarily or capriciously, could open us to challenge on some of those issues. So, that's why there's no specific mention of producing these in a specific language. The next...oh, I guess I'd call difference, major point, a difference between the state plan and the commission's recommendations, would be on Page 10. And it's actually the second bullet point. We did not specifically mention using Braille in materials or assistance to the visually impaired community. It is not meant to eliminate Braille as a possibility. But what we will do is talk to the visually impaired community to determine whether these materials are better produced in Braille or better produced through an audio capability. At least my understanding is, a member from the visually impaired community, who was on the commission, had pointed out something that I think is very valid. You could have a lot of materials available in Braille, and you can have signs posted on the wall, but if the visually impaired person does not know that they're there, they're really of no use to them. So, I think we will look at...and working with the visually impaired community about whether it is better to use audio assistance, in a lot of cases, or whether or Braille is an alternative. I know that we have situations where people have entered the visually impaired community later in life and Braille is not necessarily the best mechanism to communicate with them. There were a few things in the recommendations report and two of them require...under Requirement 3, that'd be at bottom of Page 10 and bottom Page 11.

JOHN GALE: Christie (spelling?), could you help Kathy with the door?

NEAL ERICKSON: In the recommendation report...or commission recommendations, one of the items they had was pay high school and college students to work in the election official's office. The other item was a...on Page 11, was giving counties a state designation of Model of Democracy. I think these are both possibilities. I would point out, however, that paying high school and college students to work in local election official's office is a...within the purview of the local election officials and is really...and that's why something like that is not included within the state plan. It is much more focused at the local election official, as opposed to a statewide policy.

JOHN GALE: Now I have to have you clarify that. You say Page 11 of the recommendations?

NEAL ERICKSON: Yeah, under number 3.

JOHN GALE: Right at the top?

NEAL ERICKSON: Yes.

UNKNOWN WOMAN: And I really don't want to (inaudible).

NEAL ERICKSON: On the recommendations, Page 10, under sub-B, item C, 1c. And then on Page 11, under item 3, the second bullet point.

JOHN GALE: Okay, is everybody following that all right? No.

NEAL ERICKSON: Okay.

UNKNOWN WOMAN: Could you read the text in (inaudible).

NEAL ERICKSON: Okay. First one on Page 10 is, pay high school and college students to work in the election official's office.

JOHN GALE: Are you on Page 10?

NEAL ERICKSON: That's on Page 10, probably two-thirds of the way down, four or five...

JOHN GALE: Or are you on Page 9?

NEAL ERICKSON: I've been on Page 10.

UNKNOWN WOMAN: The pages are different because the website prints off...

NEAL ERICKSON: ...stuff differently.

UNKNOWN WOMAN: ...differently, so.

JOHN GALE: Oh.

NEAL ERICKSON: Okay, then I'll...okay, what I'll do is I'll just read the stuff then, rather than give you page references, because mine is done from Martha's copy, whereas you may have website versions. The item was, pay high...

JOHN GALE: I'm glad it's not just me, Neal, I...

NEAL ERICKSON: Yeah, oh good...that was (laughter). One of the recommendations was, pay high school and college students to work in the election official's office. As I mentioned, this is something that the local election's purview and really would not be included within the state plan. Another item was provide grants to counties to help conduct outreach concerning HAVA. Certainly that's (inaudible). Reward them for increases in voter registration among target groups and increases in percentage of voter turnout. Share models others have used. Encourage "Get Out the Vote" drives. Give counties a state designation "Model of Democracy" when they reach certain milestones and performance goals. I think all laudable items. One thing that we would mention now, that rewarding them for increases, you know, if it took the version of a "Model of Democracy" or something along those lines, that might be. But once again, we don't want to get in the situation of having counties competing against each other for monetary resources. It's not healthy to the overall election administration to have that, was the feeling. The next item I had was a provisions that make Election Day provisional...excuse me, make Election Day provisional voting paperwork application usable as the voter registration for the next election. Institute record keeping that allows the county election official to tell a provisional voter whether the...their vote counted, if not, why. This was not specifically included in that manner in the state plan, because that is actually one of the mandates of the federal act. So it's included as a mandate, but it's not included as kind of an add-on feature, I guess. The other thing I'd point out, it is not the county election officials who will tell the provisional voter whether their vote is counted, but it will be the state that does. We there...as Secretary of State Gale mentioned, either through a toll-free hotline or website application. And so, there was a recommendation that the language of the voter registration, which currently reads, "To the best of my knowledge and belief, I declare under penalty of election falsification that I am at least 18 years of age, or will be 18 years of age on or before the first Tuesday after the first Monday of November. I'm a citizen of the United States. I live in the state of Nebraska at the address provided above. I have not been convicted of a felony", et cetera, et cetera. That'd be reworded. Now, that is in statute right now, so any rewording of that is going to have to be done through a statutory change, hence it is not included within the state plan. There was suggestion...or one of the suggestions was in the state recommendation. The

overall suggestion was, county officials continue to bear responsibilities to disseminate training materials and conduct training events. As a bold point underneath, it was suggested, but not everyone agreed, that matching grants to local offices provide over and above current effort training may be provided. The group did not want to...want small counties to be penalized for lack of a grant writer or record keeper if funds are given, a base amount should be given to each county and increments added to subsidize new training initiative. It was the feeling, in writing the state plan, the training of poll workers, primarily should remain a county function. A county should be providing adequate training to assure competent poll workers. Certainly, there will be materials available from the state level to assist in that training overall. But in terms of the having the state individually train poll workers, that is probably something that's best left to the counties, was the feeling at that point, so.

JOHN GALE: The Secretary of State's Office does provide staff for training at various gatherings, such as NACO meetings and maybe even individual requests by individual counties. So, there's a constant cooperation and partnership between the state and the counties for that training. And presumably some of the federal funds could be used for that.

NEAL ERICKSON: Exactly. Another recommendation was to consider a pilot project is unable to meet the 2004 deadline desired by the commission, and place one DRE in each county election office by 2004 to provide exposure, public awareness, and election official experience before statewide dissemination. While this one I don't think necessarily can be ruled out, it was not in the state plan because I think it'll be very difficult to meet the 2004 election deadline. A lot of that has to do with, in terms of developing the RFP to purchase the 1,500 units that'll need to be available in 2006. And pilot projects that might give one vendor a leg up on another may not sell real well. And, why I said on this one, I can't say we won't have anything in place in 2004, but I think it's unlikely and was therefore included...not included within the state plan.

JOHN GALE: And when you say anything in place, that would mean to have the requests for bids, specifications prepared to get the bidding completed to allow the purchasing of the contract, implementation all to be done in time for the November 2004 election is next to impossible.

NEAL ERICKSON: It is very unlikely, and next to impossible. In addition, in terms of doing installations, we would try and avoid doing installations during election cycles much as possible. Local election officials have enough on their hands during that. That's why the current timeline currently calls for installation of both voter registration system and the new vote tabulation equipment, the DRE's, and/or precinct scanners in calendar year 2005. So...

JOHN GALE: Do you think the commission was considering that there be a short-term rental of equipment? Is that type of thing possible?

NEAL ERICKSON: Well it...

JOHN GALE: Or is that, again, interfering with the bidding process by...

NEAL ERICKSON: Well...and that would be possible. But as...we've had numerous meetings in the Secretary of State's Office with potential vendors and they are very concerned about one company or another having a leg-up at this point and time. And in terms of bidding on these major purchases, these are a very big purchase, the idea of having, unless we're some way to be equitable among all the vendors in terms of establishing the pilot project, it may be counterproductive to try and implement one, considering the hard feelings it may create in...and potentially lawsuits, in terms of the RFP.

JOHN GALE: This could still be done by counties on a county-by-county basis if they wanted to lease equipment for the 2004 election, but it wouldn't need to be part of the plan, which is a statewide plan under HAVA.

NEAL ERICKSON: Exactly. Currently counties, to a degree, are responsible...for the most degree are responsible for their own equipment. And as long as it's certified piece of equipment, they are allowed to use that within their county to conduct vote tabulation for Election Day. So, the State Plan Commission, in one of...towards...well towards the end of the report I guess, recommended a large number of items. Among them, plan toward providing online voting, make it possible to vote anywhere in the state, oh I think they had elections by mail.

JOHN GALE: Is that under Requirement 4? How the state will adopt voting system guidelines?

NEAL ERICKSON: Yes, I believe it is. Yeah, I believe it is. Under Requirement 4, yes. They identified a lot of ideas in there; Election Day, same day registration, Election Day registration. Those items were not included within the state plan. These were considered to be much more long-term policy decisions the Legislature will have a role in deciding. Whether it be, you know, with the, I want to say Vote Nebraska Initiative, or another mechanism that these ideas may be more fleshed out, it felt...it was felt that it was kind of outside the purview of HAVA right at this point in time. Not to pass judgment on whether the ideas had value or not at this point in time, in fact some of these ideas have been discussed. And some of them may have potential down the road. I know, for example, making it possible to vote anywhere in the state is something that we have the technology...or we're close to at least the technology to be able to do that. And maybe that's something we do take a look at. But certainly at

this point and time, that is a bit farther down the road, in addition, that would take some policy consideration by the Legislature to accomplish those.

JOHN GALE: So while the plan, as incorporated, does not include those, those are certainly things that can be referred to the Voter Initiative Taskforce.

NEAL ERICKSON: Certainly, or, you know, I think...I guess I would look at these, these are things that need to remain on the table for discussion as we go forward examining the election process. But in terms of what's in the state plan right now, dealing with the mandates, et cetera, they were not included because they were a little more future forward thinking. And were much more policy decisions, as opposed to meeting the mandates of the federal requirement. There were some comments in the commission recommendations on the administrative complaint procedure. A couple of them included providing, at cost to the state, interpreters or assistants to those with hearing impairments. That was not specifically included within the administrative complaint procedure or the plan because it was felt that those are, in effect, common courtesy and would be provided and that level of detail was not necessary. The other item that was included in there...

JOHN GALE: Just for clarity, we're now talking about Requirement 9.

NEAL ERICKSON: Requirement number Nine.

JOHN GALE: Um-hum.

NEAL ERICKSON: The other recommendation was included in there ran along the lines of annual reports, et cetera. But one item, and this was the last bullet point under Requirement number Nine, is that in effect, name, address, et cetera, remain confidential. That's something that really can't be included because this process will be open to the...is under the Public Records Act. There's really no way for us to exclude that type of item. In terms of the types of reports, et cetera, all that data is going to be available under the Public Records Act anyway, so that's...it wasn't specifically mentioned within the state plan. One item I passed up because there were a number of people that testified this morning on this, and that is the issue of the mentally incompetent. And I know that this was one of Kathy's big issues, and from the comments today, first of all, I'd like to draw a distinction between somebody who's mentally disabled and somebody who's been adjudicated mentally incompetent. I personally don't believe that this plan...this plan encompasses those that are mentally disabled or have a mental disability. When it gets to somebody who is adjudicated mentally incompetent, that creates a whole new set of problems. And at least my understanding is, is anymore an actual adjudication of mental incompetence is a very rare, if almost non-existent occurrence anymore. That...

JOHN GALE: But then...just for clarity, if a family goes in and asks for appointment of a guardian for an elderly relative and the district court grants that, is that a finding of mental incompetence?

NEAL ERICKSON: At least a view within our office has been that the mere appointment of a guardianship is not an adjudication of mental incompetence because guardianships can be appointed for a variety of reasons. Some of which, you can have a guardianship appointed for financial considerations, which really has nothing to do with voting. However...

JOHN GALE: One of the difficulties I have with the alternative is, the mental health boards, those are considered to be private, non-public proceedings, and therefore I guess I'm not sure how we would get evidence of an adjudication by a mental health board.

NEAL ERICKSON: Well, and it's usually a case of, the individual who attempts to register to vote signs and oath saying that they have not been adjudged mentally incompetent. And the difficulty with this, and the reason the state plan does not address this issue, is because it is a constitutional provision within the Nebraska Constitution, that some...in the suffrage section, that someone who has been adjudicated mentally incompetent does not have the right to vote. You know, we recognize, understand, empathize, with, you know, prior to the current practice, where perhaps those mental incompetent orders were more frequently given out, that it puts some of those people in a bind, because there really is not, at least as far as I'm aware, a viable mechanism how to have that order changed. But, you're correct in that, there really is no way for a local election official to check that, to check there's no record available out there as to who has been judged mentally incompetent. It is on, to a degree, on the person that is applying for voter registration. They are swearing an oath they have not been. And...

JOHN GALE: So it comes down to the same process as a prior felon, who also swears that they have not ever had a felony conviction...

NEAL ERICKSON: To a degree.

JOHN GALE: ...and it's really an honor system for the people themselves.

NEAL ERICKSON: To a degree. And technically, I mean, if they would falsely swear on that, they've committed a felony on that if it is proven later that yes, they were, you know, either not a citizen, not 18 years of age, convicted a felony, or judged mentally incompetent, they've committed a felony by signing that voter registration application.

JOHN GALE: Is there any central collection system that collects adjudications of mentally incompetent so that there is a statewide database of who's on it and who's not on it?

NEAL ERICKSON: Certainly not that I'm aware of and, you know, even within guardianship orders, you will see a variety of, you know, language used in those. You know sometimes sifting through that is going to be probably more difficult so there's really, I'm not sure there's even a way to create a database on those. You know we do have a criminal justice system we can go through for felonies, but in a lot of cases, a guardianship, being a civil action, there...I'm not sure there's a database out there that records those type of transactions that we could even access.

JOHN GALE: I just...my mind kind of spins as I start thinking about people who were charged with serious crimes but are deemed to be incompetent to be...to stand for trial until psychiatrists later adjudge them to be competent. So during that interim period of time, how does a county clerk know whether that person should or shouldn't be on the voter registration list. Or a Charles Symantz (spelling?) who was found not guilty by reason of insanity and therefore is committed to a state institution, but he's not been found guilty of a criminal...he's simply been found insane. But then, as the process of insanity progresses through the psychiatric system, how do you ever know whether he's reached the point where he's competent to vote? It's...I can't even begin to get a grip on it.

NEAL ERICKSON: Yeah, and I think, you know, the things that Kathy Hoell brought up within the commission being, is it correct? I mean, you're right, there is no effective, easy, accessible system to alter those determinations if they were made. There's really no way for us to access them this point and time. But the bottom line is, we've got them in the constitution. And it's difficult at this point, you know, it's not something we can ignore. If they were adjudicated mentally incompetent, there's not a whole lot we can and say, oh, we can just ignore that and lie to register to vote. It just doesn't work that way. And so...

JOHN GALE: And from the constitutional provision, or the reading of that provision, it's not clear whether it's talking about a judicial court determination of incompetence, versus an administrative board such as a mental health board.

NEAL ERICKSON: And argue I think that's a good point also. Now, there is certainly situations where, and like I said, that's where I draw a distinction between being adjudicated mentally incompetent and having a mental disability. I don't think there's anything in this plan, I think any time we talk about somebody with a disability, whether it be physical, whether it be visual impairment, mental disabilities are included within those as well. And the amount of voter outreach, the grant programs, et cetera, should be designed to encompass those as well. But, when it comes down to where you actually use that phrase, mentally incompetent, we've got a little bit more of a problem there.

JOHN GALE: But it does, the constitution does require that there be a, how did you phrase it, judicial determination or a...

NEAL ERICKSON: I'd double check the language. I don't think it does. I...unless you've been convicted of a felony, adjudicated mentally incompetent, or not a citizen, et cetera, that's what you gives you your right for suffrage in this state.

JOHN GALE: The thing that would concern me the most would be local poll workers knowing their neighbors and they know some neighbor has suffered serious bi-polar disorder and is on medication, and that poll worker says, well, you're mentally incompetent because I know you're bi-polar. That would be a serious concern. I don't know that that's happened anywhere, but that's an adjudication by a poll worker and not by a court.

NEAL ERICKSON: Oh, I would certainly agree and certainly the...I think you'll find local election officials who would be aghast at that, as I am when I talk to local election officials. Theoretically, that was a violation of Voting Rights Act, Civil Rights Act, subject to a 1983 action. And one of the things I use, and I think I've gotten the fear of God into the local election officials, in a 1983 action, is that you are subject, or as potentially not only in your official capacity, but also in your personal capacity. And, you know, if they could pass that message down to poll workers as well, maybe it throws the fear of God into them, in terms of making some decisions we sometimes see poll workers make.

JOHN GALE: Do you think provisional voting will allow that type of ballot to be also subject to review, in other words, if a local poll workers says, well yes, you registered but, I think you're mentally incompetent, at least that's the community opinion, and therefore I'm not going to accept your ballot. Can provisional voting work for that as well as registration questions?

NEAL ERICKSON: Theoretically it could. On the other hand, I've always been very leery and I've expressed this opinion to local election officials, of having poll workers make any determinations as to qualifications. If they are on the voter registration list, they have previously been determined to be qualified, at least at some level. Now there are provisions within the law as to how to challenge a voter. I'm not sure it's appropriate for the poll workers to be doing that. If there is, you know, if there was a previous challenge filed, it is marked on that poll book and there is a procedure they go through in terms of providing the oath. And then, if that person signs that oath, they are given a regular ballot, we don't need a provisional ballot. And it is cast that way. You know, I'm not sure it's a wise policy to have the...

JOHN GALE: I see the point but I...you have the same thing could happen with felons, or alleged felons. Someone's on the voter registration list, they've been allowed to register...

NEAL ERICKSON: Right.

JOHN GALE: ...they come in to vote, and some local poll worker says, I know you went to prison and I'm not going to let you vote. Well, they might have been pardoned or may not have been a felony, it may have been a misdemeanor. So there's a lot of things that may handle that. Would provisional balloting also work for that?

NEAL ERICKSON: Well, theoretically it could. (Inaudible) the way the law is set up right now is that that's not used. If their name appears...the only reason you use provisional balloting is if their name does not appear on the poll book. Like I said, if their name appears in the poll book, at least at some point previously, were determined to be eligible to vote.

JOHN GALE: I see. Really, that's the criteria. Um-hum.

NEAL ERICKSON: So we're going with that criteria. In addition, you know, the other reason I'd be hesitant to have poll workers raise these issues, it's not just merely the denying them the right to vote, it's even bringing up things like that might intimidate that voter, and that is...into not voting, and that is as serious as denying them outright. That, for example, is why we do...don't do voter maintenance provision...or voter maintenance efforts on voter registration lists 90 days prior to an election. We don't want to be sending notices out to people that might scare them, that think they're in trouble, and not go vote for that simple reason. That's why the federal law requires things like that. So...

JOHN GALE: Well the purpose, part of the purpose of my discussion with Neal on this issues is, obviously these are matters of the commission raised and wanted to share with us in their recommendations. Very valuable, helpful, provocative questions. And they may not fit within the boxes of the 13 categories that we need to answer to meet the test of HAVA, but they're all good matters that need to be considered, both by the taskforce and by legislative committees so, it's all useful information. Just because it's not in the final plan, doesn't mean it won't be part of further deliberation and discussion.

NEAL ERICKSON: Well in closing I'd kind of like to thank Martha again, and the members of the commission, Dale, and Dave, and Mike Scarpello, June, Kathy, et cetera. They made this process easier for our office in terms of putting this plan together. Their diligence was incredible. I think, from those commission meetings, everybody learned something. I even think some of our local election officials that were on there learned some things too, you know, even about their own craft. So I think it was a very helpful process and I do appreciate all their efforts on this. So, I think we put a good team together to implement this. I think the plan is, for the most part, very good. The one thing I would hope for is the federal government continues to fund this thing at levels that allow us to do everything we'd like to do. So...

JOHN GALE: Now anyone in the audience, including any members of the commission who want to further respond, particularly to comments of yours in the course of your testimony can submit written letters or handwritten memoranda to become part of the record, before July 10th. Okay, thank you, Mr. Erickson, and I think maybe we have, Miss Johnson wants to comment.

J. ROCK JOHNSON: Yes, this is J. Rock Johnson again and I'd like to know what happened to Page 8? (Laughter)

JOHN GALE: Took...

J. ROCK JOHNSON: Because it didn't say, this page intentionally left blank, as one sometimes sees. So that would be, looking on the website and seeing what the issues are.

JOHN GALE: Yeah, I'm sorry that page was omitted. I've tried to work with that copier myself and I know that it's somewhat fickle. So I apologize for those who missed Page 8. They...

J. ROCK JOHNSON: And the other...

JOHN GALE: ...we will make them available to anyone that...

J. ROCK JOHNSON: The other issue is simply access to technology, the digital divide. And while I work through (inaudible) with, same struggle, different disabilities, what I'm trying to articulate here is, not everybody has a computer, not everybody has access to a computer. People don't necessarily know that they can get free email accounts at the library. And there's a tendency to think that what we have access to, others do. And I think it would...it might be tricky in terms incorporating this into your goals and objectives, as a Secretary of State office. But to begin to look to some mechanisms whereby people who are isolated, alienated, alone out there, to, and again, it might not be something that can come from your office, but at least for people who are in positions of authority and influence, to try to be gathering up those computers and getting them out to people. Because that is the fastest, most inexpensive way of exchanging information. And I'd also suggest that when you do Volume I, Number II of your newsletter, that that...that probably already is available on the web, I'm not sure. But anyhow, I just think we need to be mindful there are people in this state who do not...

JOHN GALE: We'll make sure it is available on the web. It should be, I guess I haven't double checked, but it should be on there.

J. ROCK JOHNSON: There are people in this state who do not have telephones. And I don't doubt that there are some people in the state who may not even have electricity. So there are...and there are challenges in terms of, if we're really, actually, very serious. We've got 1,700,000 people who need to be informed. And we can

only do the best we can under the present circumstances with the resources. I just want to say that I know it happens...

JOHN GALE: Well we hope to have a good partnership with the broadcasting industry and the news industry, all the media. And a partnership that...we really need, what I think of as a citizenship crusade in which we get the media, the schools, the parents, the students all involved in a very inclusive process of civic education and voter commitment. So...

J. ROCK JOHNSON: Well, that would be something that possibly the commission...because the commission is ongoing, correct? It's not being disbanded?

JOHN GALE: Correct.

J. ROCK JOHNSON: Okay, to begin to look at some brainstorming and access to media, but with all due respect, given its history, I would call it a quest rather than a crusade.

JOHN GALE: Okay, thank you.

J. ROCK JOHNSON: Thank you.

JOHN GALE: Thank you, Miss Johnson. Well, it is now 11:40 and we've had a very interesting morning and a lot of very good testimony that's now included in our transcript of this matter. And we appreciate all of your participation, and if you have any further to add, please send us a letter or send us an email, and we'll include it in the record. But it does need to be received by July 10th. We thank you all for attending today. We're adjourned.